

*Contested decision:* Decision of the Fourth Board of Appeal of EUIPO of 31 August 2016 in Case R 1195/2016-4

### **Form of order sought**

The applicant claims that the Court should:

- annul the contested decision;
- order EUIPO to pay the costs of the proceedings.

### **Plea in law**

- Infringement of Article 7(1)(b) of Regulation No 207/2009.

---

## **Action brought on 7 October 2016 — Berliner Stadtwerke v EUIPO (berlinWärme)**

**(Case T-719/16)**

(2016/C 441/38)

*Language of the case: German*

### **Parties**

*Applicant:* Berliner Stadtwerke GmbH (Berlin, Germany) (represented by: O. Spieker and A. Schönfleisch, lawyers)

*Defendant:* European Union Intellectual Property Office (EUIPO)

### **Details of the proceedings before EUIPO**

*Trade mark at issue:* EU word mark ‘berlinWärme’ — Application for registration No 14 062 558

*Contested decision:* Decision of the First Board of Appeal of EUIPO of 19 July 2016 in Case R 618/2016-1

### **Form of order sought**

The applicant claims that the Court should:

- annul the contested decision;
- order EUIPO to pay the costs of the proceedings.

### **Pleas in law**

- Infringement of Article 7(1)(c), in conjunction with Article 7(2), of Regulation No 207/2009;
- Infringement of Article 7(1)(b), in conjunction with Article 7(2), of Regulation No 207/2009.

---

## **Action brought on 10 October 2016 — ARFEA v Commission**

**(Case T-720/16)**

(2016/C 441/39)

*Language of the case: Italian*

### **Parties**

*Applicant:* Aziende riunite filovie ed autolinee Srl (ARFEA) (Alessandria, Italy) (represented by: M. Chiti and V. Angiolini, lawyers)

*Defendant:* European Commission

### Form of order sought

The applicant claims that the Court should:

- Annul Commission Decision of 10 June 2016 on State aid SA.38132 (2015/c) (ex 2014/NN) — Additional PSO compensation for ARFEA, and, in so far as necessary, any other related and/or prior acts challenged in these proceedings.
- Order the defendant to pay the costs.

### Pleas in law and main arguments

The contested decision declares incompatible with the internal market and orders the recovery of the aid alleged to have been granted by the Italian authorities to the applicant, a private company which supplies local public transport services based on concessions and private transport services as a business activity, as compensation for performance of a public service obligation.

In support of the action, the applicant relies on seven pleas in law.

1. First plea in law, alleging infringement and misapplication of Article 108(3) TFEU.
  - The applicant claims in that regard that the measure contested by the Commission does not constitute State aid. In any event, it is not ‘new’ aid, to which the provision cited refers.
2. Second plea in law, alleging infringement and misapplication of Article 107 TFEU.
  - The applicant claims in that regard that the contested measure constitutes compensation for public service obligations imposed on ARFEA in accordance with final judgments of Italian courts, and not ‘State aid’ within the meaning of the TFEU provision cited.
3. Third plea in law, alleging infringement of principles concerning the application of EU law, of general principles of non-retroactivity of legal rules and of legal certainty, and of principles established in the field concerned by the Court of Justice.
  - In that regard, the applicant disputes the application of Regulation (EC) No 1370/2007 in the present case, as provided for in the contested decision. The present case, which relates to events which took place in 1997-98, falls under other EU legislation (Regulation (EEC) No 1191/1969).
4. Fourth plea in law, alleging infringement of principles concerning the limitation of rights.
  - The applicant company submits in that regard that it is challenging the recovery decision in respect of the measure in question 18 years after the facts underlying the case.
5. Fifth plea in law, alleging infringement of general principles established by the case-law of the Court of Justice defining State aid, and principles concerning the procedural autonomy of the Member States.
  - The applicant company claims in that regard that it intended to demonstrate, in the matter at issue, that the principles established by the Court of Justice in Case C-280/00, *Altmark Trans and Regierumspräsidium Magdeburg* were observed. Furthermore, the company submits that the contested decision has encroached upon an area subject to the exclusive jurisdiction of the national courts.
6. Sixth plea in law, alleging infringement and misapplication of the rules governing State aid in so far as concerns unilaterally imposed public service obligations.
  - The applicant company claims that the Commission did not take into account the fact that, in the present case, the Piedmont Region imposed a public service obligation upon it, to be compensated using measures not covered by the concept of State aid.

7. Seventh plea in law, alleging infringement of principles governing the temporal succession of legal rules.

- The applicant company disputes, from a different angle to that put forward in its plea in point 3, that Regulation No 1370/2007 applies to the present case. The company submits that, in the present case, the Commission did not take into account that the Piedmont Region imposed a public service obligation on it, to be compensated by measures not covered by the concept of State aid.

---

**Appeal brought on 12 October 2016 by Giorgio Cocchi and Nicola Falcione against the order of the  
Civil Service Tribunal of 2 August 2016 in Case F-134/11, Cocchi and Falcione v Commission**

**(Case T-724/16 P)**

(2016/C 441/40)

*Language of the case: French*

**Parties**

*Appellants:* Giorgio Cocchi (Wezembeek-Oppem, Belgium) and Nicola Falcione (Brussels, Belgium) (represented by S. Orlandi, lawyer)

*Other party to the proceedings:* European Commission

**Form of order sought by the appellant**

The applicants claim that the Court should:

- Set aside the order of the Civil Service Tribunal in Case F-134/11, *Cocchi and Falcione v Commission*; and, giving judgment itself:
- Annul the decision of 9 March 2011 refusing the requests for assistance;
- Order the Commission pay the amounts of EUR 22 000 to Mr Falcione and EUR 35 000 to Mr Cocchi, in respect of the damage which they have suffered;
- Order the Commission to pay the costs of both instances.

**Pleas in law and main arguments**

In support of the appeal, the appellant relies on a single plea in law, alleging that the Civil Service Tribunal erred in law in its assessment of the appellants' interest in pursuing the proceedings. The appellants, it is claimed, have more than a mere administrative interest in having their appeal upheld.

---